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ing through her husband. Judge Baldwin here enters into a learned and elaborate discussion of the question, and a perusal of his opinion will well repay the few minutes' time required for the task. The case being one where the land was *valuable only for the timber*, it is a precedent for similar cases only, though the opinion presents a learned discussion of the general subject. It appeared that the husband of the dowress in his lifetime had been accustomed to derive large profits from a sale of shingles made from the timber. The court likened the case to that of an open mine—a mine upon the surface,—not of mineral, “but of vegetable matter, in constant course of spontaneous reproduction.”

The practical question as to the *extent* which a life tenant may cut timber in such case, though not distinctly arising in the case, depends, as Judge Baldwin conceived, upon the right of reversioner to insist that “enough” be left for him; “and what will be enough, is a question of fact, to be determined upon all the circumstances of the case. In cases like this, the extent of the tract, the quantity of timber, the period of reproduction, the demands of the market, the expenses of the employment, are all elements of the enquiry; and if these should lead in such cases to a just and convenient rule of uniform application, I presume it will be this, that the tenant's use of the timber shall be so restricted as to leave to the successive tenants and owners an equally extensive use of it.” (p. 528.)

It will be observed that none of these cases decides the practical question as to what extent a life tenant may cut timber, where the land is arable and valuable, but the *timber is the more valuable*, and consequently the value of the premises is decreased by clearing it of the timber.

In a note to *Calvert v. Rice* (Ky.), 34 Am. St. Rep. 240, 242, the editor has collected citations to numerous cases and annotations in the previous volumes of the American series. The subject is touched upon in 2 Minor's Inst. (4th ed.) 603.

OPPENHEIM, SATTERWHITE & CO. V. HENRY MYERS AND OTHERS.*

Supreme Court of Appeals: At Wytheville.

July 4, 1901.

1. HOMESTEAD—*Fraudulent deeds—Estoppel.* Grantors in deeds set aside as fraudulent at the instance of their creditors are not estopped from claiming a homestead exemption in the property conveyed, if otherwise entitled thereto.
2. HOMESTEAD—“*Householder*” or “*head of family*”—*Constitutional law.* Art. XI of the Constitution of this State, relating to homestead exemptions, is not self-executing, but is carried into effect by chapter 178 of the Code. The terms “householder” and “head of family,” as used in the Constitution and statutes passed in pursuance thereof, are convertible terms, and are employed as explanatory the one of the other. They involve the idea of dependence and support coupled with a legal or moral obligation to support the dependent.
3. HOMESTEAD—*Married women—Householder or head of family.* A married woman whose husband lives out of the State but visits her at intervals of two or

* Reported by M. P. Burks, State Reporter.

three years, and occasionally makes her small remittances of money, and who has no children dependent upon her for support, is not a householder or head of a family in contemplation of the Constitution and the statutes passed in pursuance thereof.

4. HOMESTEAD—*Art. XI, section 3, Constitution—Other security—Judgments.* The “other security,” referred to in section 3, Art. XI, of the Constitution of this State, which is declared to be paramount to the homestead exemption, is security of a like character with those mentioned in that section, that is, such as is created by the act of the debtor himself. It does not embrace judgments which are securities created by law. *Kennerly v. Swartz*, 83 Va. 704, overruled; *White v. Owen*, 30 Gratt. 43, approved.
5. HOMESTEAD—*Fraudulent deeds—Lien by filing bill—Code, sec. 2460.* After a bill was filed to set aside as fraudulent a deed made by a married woman, her husband died leaving infant children dependent on their mother for a support. The deed was set aside as fraudulent and the widow claimed the homestead.
Held: The right of the widow to claim the homestead is superior to the lien given creditors by section 2460 of the Code on filing their bill.
6. CONTRACTS—*Statutes as parts of.* Legislative enactments should be read into contracts made and obligations assumed after their enactment.

Appeal from two decrees of the Circuit Court of Bedford county, pronounced October 26, 1899, and June 2, 1900, respectively, wherein the appellees were the complainants and the appellants were the defendants.
Reversed in part.

The opinion fully states the case except as to the claim of Mrs. Oppenheim. She was a member of the firm of Oppenheim, Satterwhite & Co., which was embarrassed to insolvency. She conveyed to her husband as trustee for their infant children an undivided two-thirds interest in a house and lot in Bedford City, Virginia. This deed was assailed by creditors of the firm as in fraud of their rights. The court so held. Mrs. Oppenheim's husband, Jacob Oppenheim, had been the active manager of the business of Oppenheim, Satterwhite & Co., and was still living at the date of decree setting aside the deed as fraudulent. He supported the family. Just before the deed was set aside, he and his wife, who described themselves as “householders and the head of a family,” and residents of the county of Bedford, in the State of Virginia, executed and put to record a deed bearing date October 18, 1899, by which they “declare their intention severally and jointly to claim the benefit of the homestead exemption” in said house and lot. On October 26, 1899, Oppenheim and wife filed their petition in the cause claiming a joint and several homestead in the property, and filing the above mentioned deed as an exhibit. At this

term the court set aside the deed made by Mrs. Oppenheim to her husband, as trustee, on the ground of fraud, and referred the cause to a commissioner to take certain accounts. Before the next term of the court Jacob Oppenheim died, leaving his wife and two infant children surviving, and, at the succeeding term, Mrs. Oppenheim filed an amended petition, setting out the death of her husband and the dependence of her two infant children on her, and claiming the benefit of the homestead. No new homestead deed was made. The creditors insisted that they acquired a lien by filing their bill to annul the deed made by Mrs. Oppenheim to her husband as trustee, and that as this lien was acquired before Mrs. Oppenheim became a widow, or had the right to claim a homestead, their claim was a security superior to the claim of homestead.

Campbell & Tucker and F. J. Holbrook, for the appellants.

Graham Claytor, for the appellees.

WHITTLE, J., delivered the opinion of the court.

This is an appeal from a decree of the Circuit Court of Bedford county. The controversy involves the right of Letitia A. Satterwhite, a married woman, and W. J. Oppenheim, a widow, to have set apart to each her respective interest in a house and lot as a homestead exemption. In the year 1890 these parties engaged as partners in the retail liquor business. The firm became indebted to insolvency; and subsequently, by separate deeds, Mrs. Satterwhite, who owned a one-third undivided interest, and Mrs. Oppenheim, who owned the remaining two-thirds interest in the house and lot, conveyed it to the husband of Mrs. Oppenheim as trustee for the benefit of the infant children of himself and wife, and upon other trusts.

A bill was filed by social creditors to set aside these conveyances as voluntary, and made with intent to hinder, delay and defraud the creditors, and to subject the property to sale.

The court set aside the deeds, and thereupon the grantors claimed their interests in the house and lot as homestead exemptions. Oppenheim and wife first preferred a joint claim to her interest as a homestead; and, subsequently, the husband having died, the widow filed a petition asking that her interest be set apart to her as a homestead exemption.

The question of their right to a homestead exemption was referred to a commissioner, who reported adversely to the claim of Mrs. Satter-

white, and favorably to that of Mrs. Oppenheim. Exceptions were taken to the report by Mrs. Satterwhite and by creditors.

The court decided that neither claimant was entitled to an exemption, and decreed a sale of the property, and from that decree this appeal was taken.

The action of the lower court in setting aside these deeds as fraudulent is fully sustained by the evidence. They were shown to be voluntary, and made at a time when the grantors were insolvent, for the evident purpose of shielding the property from the demands of creditors.

The deeds having been set aside, the grantors, if otherwise entitled, were not estopped from claiming an exemption in the property. Whatever view might have been taken of this proposition originally, it is too firmly established now by repeated decisions of this court to be called in question. *Shipe v. Repass*, 27 Gratt. 716; *Boynnton v. Neal*, 31 Gratt. 456; *Marshall v. Sears*, 79 Va. 49; *Hatcher v. Crewe*, 83 Va. 731; *Mahoney v. James*, 94 Va. 176.

The constitutional provision for homestead exemptions is embodied in Article XI. It is not self-executing, but section 5 declares that "the general assembly shall at its first session prescribe in what manner and on what conditions the householder and head of the family shall thereafter set apart, and hold for himself and family, a homestead out of any property thereby exempted. . . . But the section is not to be construed as authorizing the general assembly to defeat or impair the benefits intended to be conferred by the provisions of the article."

The statute passed in obedience to that section is found in chapter 178 of the Code. The Constitution, as has been seen, declares that "every householder or head of a family" shall be entitled to claim the exemption, while the statute, sec. 3630, provides that "every householder" residing in this State shall be entitled to claim the exemption. The terms "householder" and "head of family" are interchangeable. Section 3657, as amended by Acts 1887-8, p. 423, declares: "The word 'householder' used in this chapter shall be equivalent to the expression 'householder or head of a family.'" In this connection, they are convertible terms, and employed as explanatory the one of the other. Each signifies: "One who provides for a family;" "one who keeps house with his family;" "a master or mistress of a dwelling house" (Bouvier's L. D., Titles "Head of a family," and "Householder").

The Century Dictionary gives as the primary meaning of the word

“householder,” “the master or chief of a family; one upon whom rests the duty of supporting or governing the members of a family or household.” Century Dict., “Householder.”

In the case of *Calhoun v. Williams*, 32 Gratt. 18, the term was held to signify, one who occupies such a relationship towards persons living with him as to entitle them to a legal or moral right to look to him for support.

The relation of dependence and support, coupled with a legal or moral obligation to support the dependent, constitutes the one upon whom the burden is cast, the head of a family, and entitles such person to the benefit of the exemption.

That case also decides that where there is no family, there can be no homestead.

Considering first the right of Mrs. Satterwhite to a homestead exemption, it appears that she is a married woman, residing in Virginia, and her husband in Mexico; that he has been accustomed to visit her at intervals of two or three years, and occasionally made small remittances of money; that they have six children, all of whom are of age, most of whom are married, and none of whom is dependent upon her for support. Without pretending to decide that a married woman can under no circumstances claim a homestead exemption, it is apparent, in the light of the definitions, tests and authority given above, that Mrs. Satterwhite is not a householder or head of a family in contemplation of the Constitution and statutes passed in pursuance of it.

There is no error, therefore, in the decree of the Circuit Court which denied her the right to claim a homestead exemption.

Mrs. Oppenheim, on the other hand, at the time she filed her last petition, was a widow with two infant children, who lived with and were wholly dependent upon her for support. That these conditions constitute her a householder or head of a family, both within the letter and spirit of the Constitution and section 3630 of the Code, is perfectly clear.

It is contended, however, on behalf of appellees, that inasmuch as this suit was brought under sec. 2460 of the Code, as amended, it gave creditors a lien on the interest of Mrs. Oppenheim, in the property in controversy, from the date of the filing of the bill; that the lien given by that section attached to the property before the death of Mrs. Oppenheim's husband, and, therefore, before she became a householder or head of a family, that this lien was a “security” within

the meaning of sec. 3 of Art. XI of the Constitution, and paramount to the claim of homestead. The case of *Kennely v. Swartz*, 83 Va. 704, is relied on to sustain this contention.

That case does decide that a judgment recovered against a debtor, who afterwards became a householder or head of a family, constituted such a security as is superior to the right of the judgment debtor to a homestead exemption in land which he owned at the date of the recovery of the judgment. In the opinion, no reference is made to the case of *White v. Owen*, 30 Gratt. 43, in which the court went into an elaborate analysis of Article XI of the Constitution, and decided that the phraseology, "other security," occurring in that article, "means, of course, security of a like character; that is such as is created by his (the debtor's) own act." While *White v. Owen* was decided by a divided court, the judges were agreed as to the correctness of that construction.

The court, in reaching its conclusion, applied the rule *ejusdem generis*, and adopted an interpretation in consonance with the humane object which the framers of the Constitution evidently had in mind when they declared, in section 7, that, "The provisions of this article shall be construed liberally, to the end that all the intents thereof may be fully and perfectly carried out."

This constitutional provision has also received a legislative construction which is at variance with the interpretation placed upon sec. 3 by *Kennely v. Swartz*; and which would be thwarted in many instances by an adherence to the rule of construction laid down in that case.

Section 3642 of the Code provides that, "The real or personal estate which a householder, his widow, or minor children are entitled to hold as exempt, may be set apart at any time before the same is subjected by sale or otherwise under judgment, decree, order, execution, or other legal process."

It is proper that this legislative declaration should be read into contracts made and obligations assumed since its enactment. In the light of it, it is apparent that the proper construction of sec. 3, Article XI, was reached in the case of *White v. Owen*.

This court sanctions and approves that interpretation as to the true effect and meaning of the phrase "other security" in section 3; and disapproves and overrules the conclusion reached in the later case of *Kennely v. Swartz*.

It follows from these views, that the Circuit Court erred in denying to Mrs. Oppenheim the homestead exemption claimed by her; and for

that error the decree appealed from must be reversed, and the cause remanded to the Circuit Court for further proceedings to be had therein in conformity with this opinion. *Reversed in part.*

NOTE.—The chief point of interest in this case is one of much importance, and the decision will doubtless come as a surprise to many members of the profession. The decision is, that a lien acquired by judgment, execution, or in any other manner than by the voluntary act of the debtor (as by mortgage, deed of trust, pledge, etc.) must give way to the debtor's claim to the homestead exemption, even where the lien attaches prior to the debtor's becoming a householder or head of a family.

As shown in the opinion, a distinct ruling to the contrary was made in *Kennely v. Swartz*, 83 Va. 704. In the principal case it is held that the question turns upon the proper construction of that clause of the Constitution which declares that "Nothing contained in this article shall be construed to interfere with the sale of the property aforesaid, or any portion thereof, by virtue of any mortgage, deed of trust, pledge, or other security thereon." The three kinds of security here mentioned being all of a voluntary and contractual character, the court applies the familiar rule of *ejusdem generis*, and holds that the otherwise broad expression "other security" is to be construed as other security of a like kind, and hence that involuntary liens, such as judgments, executions, attachments, etc., are excluded from the purview of the section quoted. A judgment by confession, being of a voluntary character, would doubtless be construed as included in the expression "other security." See *Tate v. Building Ass'n*, 97 Va. 74, 81-82.

The construction adopted was suggested in *Owen v. White*, 30 Gratt. 43 (top p. 52), referred to in the opinion, though this particular application of it was not made, nor, indeed, called for in that case—the case involving merely the question whether a deed of trust by a husband and wife, on property already set apart as exempt, was valid under the Exemption Article of the Constitution.

The conclusion announced seems warranted by the language of the Constitution and the settled rules of construction.

Another question of probably greater importance was made and argued in this case, but which the court found it unnecessary to decide, namely, whether a married woman may under any circumstances claim the benefit of the exemption laws of this State. The court seems to be of opinion that under certain circumstances she may, but decides only that, under the particular circumstances of this case, the married woman was not proved to be the head of a family. The facts were, that her husband, living in Mexico, visited her at intervals, and occasionally made small remittances of money to her, and that there were no children or others for whose support she was morally or legally bound. Our readers will recall that this right of the married woman to claim the benefit of the exemption has been several times discussed in these pages. See 6 Va. Law Reg. 526, 533, 661, 700.